

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

**IN THE MATTER OF THE APPLICATION OF ERIC)
HORNE AND VALY STEVERLYNCK FOR AN)
AQUACULTURE LEASE LOCATED IN THE)
SHEEPSHOT RIVER, BETWEEN CUNNINGHAM)
ISLAND AND LEHMAN ISLAND, NEWCASTLE,)
LINCOLN COUNTY, MAINE)**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

On June 1, 2004, Eric Horne and Valy Steverlynck of Freeport, Maine applied for an aquaculture lease totaling 3 acres in the coastal waters of the State of Maine, located in the Sheepscot River, between Cunningham Island and Lehman Island in Newcastle, Lincoln County, Maine. The applicants requested the lease for a term of ten (10) years for the purpose of cultivating American oysters (Crassostrea virginica) and European oysters (Ostrea edulis), using bottom culture techniques. The application was accepted as complete on June 21, 2004. A public hearing on this application was held on September 29, 2004 at 6:00 p.m. in Newcastle.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that, taking into consideration the number and density of aquaculture leases in an area, the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area; significant wildlife habitat and marine habitat or the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna; or the public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site and that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

**Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease**

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the September 29, 2004 public hearing. At the public hearing, testimony was given by the applicants, Eric Horne and Valy Steverlynck, and the Department's Aquaculture Environmental Coordinator, Jon Lewis. Newcastle Harbormaster Paul Bryant was the only member of the public in attendance.

According to the application and the testimony by the applicants, the proposed lease is sought raise American oysters and European oysters. The applicants request a lease site totaling three (3) acres, for a lease term of ten (10) years. The applicants testified that the metes and bounds description of the lease area in the Department's site report is correct and the actual lease acreage is 2.96 acres. The applicants currently operate an experimental aquaculture lease in the proposed lease area. The proposed lease area consists of the experimental lease and an additional area of approximately one acre south of the experimental lease area.

According to the application, the proposed lease activities would be conducted in the same manner as under the experimental lease and would consist of direct planting of oysters on the bottom of the lease area. Market-size oysters would be harvested by dragging with a small skiff-drawn drag. The 22' skiff would be powered by a 4-stroke 40hp Honda outboard. Additionally, the skiff would contain a 12" electric lobster pot hauler for harvesting. According to the applicants, the motor for the hauler is enclosed in the console of the skiff and is inaudible more than four feet away. According to the application, the applicants would be present at the lease site approximately one to two days per week from early spring through fall. Up to 1.3 million oysters would be grown on the proposed lease site. According to the application, all

seed shellfish would be obtained from the hatcheries of Muscongus Bay Aquaculture in Bremen, Maine and Marshall Point Sea Farm in Port Clyde, Maine.

In accordance with Department regulations, 2.10(3), the applicants provided an environmental characterization of the proposed lease area. According to the application, the river bottom at the proposed lease site consists of sand and pebbles. The depths at extreme low tide are estimated to be between 4 and 10 feet. Local flora includes seaweed, and local fauna includes green crabs and rock crabs. The current flow is estimated to be 1 to 1.5 knots. The applicants provided a letter from Keel Kemper, a wildlife biologist with the Department of Inland Fisheries and Wildlife. Mr. Kemper stated in the letter that the proposed lease site is not located within an Essential or Significant Wildlife Habitat.

According to the application, there is some boat traffic in the area from sport fishermen, recreational boaters, kayakers and lobstermen. According to the applicants, the lease activities on the site will not interfere with any boat traffic. The applicants have not experience any problems during the operation of the experimental lease. According to the application, the applicants would not exclude lobster fishing or recreational fishing and boating from the site. However, the applicants requested that dragging or raking by others be prohibited within the lease boundaries. The applicants testified that they would agree to the same conditions that were placed on the experimental lease that allow fishing and boating on the site, prohibit dragging by others, require the applicants to test the seed shellfish for disease prior to planting them at the site, and require the applicants to cease dragging to allow passage.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit at the proposed lease area on August 10, 2004. The AEC created a site report summarizing the information obtained during the site visit and provided testimony regarding the site report at the public hearing. According to the report and the AEC's testimony, the proposed site is located in shallow water depths ranging approximately from 5 to 12 feet at low tide. Local flora and fauna include worm tubes, American oysters, green crabs, rock crabs, horseshoe crabs, red beard sponge, knotted wrack, rockweed, brushy red-weed and hermit crabs. According to the AEC's

report, the proposed lease is located in an area classified as open for the harvest of shellfish by the Department's Water Quality Division.

According to the AEC, no moorings were observed within the area of the proposed lease site. There is one dock located approximately 174 feet north of the proposed site. According to the AEC, the proposed lease activities are not expected to interfere with use of the dock. Additionally, according to the AEC, the proposed activities will not interfere with navigation because the lease site will not contain any structures. According to the AEC's report, recreational fishing for striped bass occurs in the lease area. On August 10, 2004, the AEC observed four anglers fishing on the experimental lease site. According to the AEC, the proposed lease activities would not interfere with fishing in the area.

Findings of Fact

The proposed lease is located on the Sheepscot River, between Cunningham and Lehman Islands. There is one dock located approximately 174 feet north of the proposed lease site. There are no moorings located in the area of the proposed lease site. No use of riparian land was requested or required. There will be no structures located on the lease site, aside from four corner buoys marking the boundaries. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

The proposed lease is located in shallow water depths of approximately 5 to 12 feet. Navigation in the area consists of vessels associated with sport fishing and lobster fishing, as well as recreational boats and kayaks. The lease area will be used for bottom culture only and will therefore not contain any gear that would pose a navigable hazard. Additionally, the applicants have agreed to a lease condition that would require them to stop dragging if anyone needs to pass through if they are in the way. Based on the foregoing, I find that the proposed lease will not unreasonably interfere with navigation.

Fishing in the area of the proposed lease site consists of recreational fishing for striped bass and lobster fishing. The nearest existing aquaculture lease is located down river. The area of the proposed lease is classified as "open" for the harvest of shellfish. The applicants will

allow lobster fishing and recreational fishing on the lease site. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing flora and fauna observed at the proposed site consists of seaweed, green crabs, rock crabs, American oysters, worm tubes, horseshoe crabs, red beard sponge, knotted wrack, rockweed, brushy red-weed and hermit crabs. The proposed lease site is not located within an Essential or Significant Wildlife Habitat. The applicants will test the shellfish for disease prior to planting them on the lease site. Based on this evidence, I find that the proposed activities will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna.

All seed shellfish will be obtained from the hatcheries of Muscongus Bay Aquaculture in Bremen, Maine and Marshall Point Sea Farm in Port Clyde, Maine. Based on this evidence, I find that there is an available source of American oysters and European oysters.

The proposed lease site is not located within 1,000 feet of any public beaches, parks, docking facilities, or conserved land. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency.

The skiff used to access the site and for harvesting activities would be powered by a 4-stroke 40hp Honda outboard. Additionally, the skiff would contain a 12" electric lobster pot hauler for harvesting. The motor for the hauler is enclosed in the console of the skiff and is inaudible more than four feet away. Additionally, lighting will not be used at the lease site. I find that the proposed lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

Conclusions of Law

Based on the above findings, taking into consideration the number and density of aquaculture leases in the area, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of American oysters and European oysters to be cultured for the lease site; and
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency; and
7. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

Decision

Based on the foregoing, the Commissioner grants the applicants' requested aquaculture lease of 2.96 acres from the date of this decision for the purpose of cultivating American oysters (*Crassostrea virginica*) and European oysters using bottom culture techniques. The applicants shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicants shall post a bond or establish an escrow in the amount of \$500 conditioned upon their

performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) navigation, lobster fishing and recreational boating and fishing shall be allowed on the lease;
- (2) dragging in the lease area is prohibited by persons other than the lease holder;
- (3) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;
- (4) the applicants shall test the shellfish for disease prior to planting the shellfish on the lease site; the applicants shall work with the Department in order to determine which tests will be required and will provide the Department with documentation of the results of the tests;
- (5) when dragging at the lease site, the applicants shall cease dragging activities if they are impeding navigation, in order to allow passage through the lease area.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources